IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.344/2001

1. Mr. Umesh Anant Bondre,
aged 50 years, resident of
House No. E/2/155-B, Naikawada,
Calangute, Bardez, Goa.

2. Mr. Rajendra Harischandra
Kalangutkar, aged 33 years,
resident of House No.419,
Prabhuwada, Calangute, Bardez, Goa.

3. Mr. Tulsidas Laxman
Vaigankar, aged 45 years,
House No.7/27-B,
Sawatawada, Calangute, Bardez, Goa. .... Petitioners.

Vs.

1. The Village Panchayat of
Calangute, Calangute,
Bardez, Goa.

2. The Director of Panchayats
Directorate of Panchayats,
Government of Goa, Junta House,
3rd Floor, 3rd Lift, Panaji, Goa.

3. The Deputy Director of Panchayats,
Directorate of Panchayats,
Government of Goa,
Panaji, Goa.

4. The Chief Town Planner,
Town and Country Planning
Department, Government of Goa,
Panaji, Goa.

5. Senior Town Planner,
Office of the Chief Town Planner,
(Divisional Office),
Town and Country Planning Department,
Government of Goa,
Mapusa, Goa.

6. Director of Tourism,
Government of Goa, Patto,
Panjim, Goa.

7. The Deputy Collector and
Sub-Divisional Officer,
Bardez, Goa with his Office at
Mapusa, Goa.

8. State of Goa,
through the Secretary (Panchayats),
Government of Goa,
with his office at
Secretariat, Panaji, Goa.

9. Mr. Martinho Lourdes
Campos Martins, son of
Emerico Q.L. Martins,

10. Mrs. Cyta Das Agustias
Fernandes e Martins, wife of
Martinho Martins,

11. Miss Filomena Lourdes Campos
Martins, daughter of Emerico
Q.L. Martins,

All major, All residing at
Porbavaddo, Calangute, Bardez, Goa

12. Arvind S. Dessai,
major, married, Civil Engineer,
residing at F4 Garse Towers,
M.G. Road,
St. Inez, Panaji.

13. The Block Development Officer,
Office of B.D.O.
Mapusa, Bardez, Goa. .... Respondents.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. A.D. Bhobe,
Advocate for the petitioners.

Mr. P.A. Kamat, Advocate for respondent No.1.

Mr.A.N.S. Nadkarni, Advocate General with Mr. H.D.
Naik, Addl. Govt. Advocate for respondents No.2
to 8.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. M.S. Joshi and
Mr. J.J. D'Souza, Advocate for respondents No.9 to 12.

CORAM : R.J. KOCHAR &
P.V. HARDAS, JJ.

DATE : SEPTEMBER 8, 2003.

ORAL JUDGMENT : (Per KOCHAR, J.)

The petitioners who claim to be the citizens of India and permanent residents of Village Calangute, Bardez, Goa, have approached this Court under Article 226 of the Constitution of India, mainly with three reliefs in the form of a writ of mandamus or any other appropriate writ or directions to be issued to the respondents, which are as under :

> "a) For a writ of mandamus or any other appropriate writ, order or direction, commanding the respondent No.1 to forthwith revoke the licence granted by it to the Respondent Nos.9 to 11, being permission No. VP/CAL/F-18/99/2000/L-99-2000/603 dated 22.6.99 and take proceedings for demolition of the illegal construction carried out by the Respondent Nos. 9 to 11 for demolition of the illegal construction carried out in the property surveyed under No.187/8.
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> b) For a writ of mandamus or any other writ, order or direction commanding the Respondent No.1 to forebear from issuing any occupancy certificate to the Respondent No.9 to 11 in respect of the construction already carried out by them in the property surveyed under no.187/8 or any part thereof.

c) For a writ of mandamus or any other appropriate writ, order or direction commanding the Respondent Nos.1 to 8 to carry out re-survey of the plot surveyed under Survey No.187/8 so as to demarcate and separate a portion thereof which has been acquired by the Government, from the remaining portion of the said plot."

2. The petitioners have claimed to be the devotees of Goddess Shantadurga installed in the age old Temple which is located in the property surveyed under No.187/11 of Calangute Village. The petitioners have raised a dispute in respect of the adjacent property surveyed under No.187/8. According to them, respondents No.1 to 8 have acted illegally in granting permission to respondents No.9 to 11 for development of the said property. The petitioners have approached this Court by filing this petition in public interest. They also claim to be Mahajans of Shree Shantadurga Devasthan - the Temple of Goddess Shantadurga. According to the petitioners, the development by the respondents No.9 to 12 is illegal and contrary to the decision of the Planning Authority. The petitioners have sought the revocation of the licence granted by the Authorities to respondents No.9 to 11 and to take proceedings for demolition of the illegal construction carried out by

them on the property surveyed under No.187/8. It may be stated that the entire construction of the building on the said land is completed. It further appears that the construction was started on the grant of N.O.C. by the Senior Town Planner on 7.5.1999 and approval of the plan granted by the Village Panchayat. It further appears that the Senior Town Planner appears to have withdrawn the permission granted to respondents No.9 to 11. There has been a difference between the Village Panchayat and the Senior Town Planner, with which we are presently not concerned. The petitioners have challenged the construction of respondents No.9 to 11 on various grounds mentioned in the Writ Petition. According to them, in a nutshell, the said construction is illegal and requires to be demolished.

3. The respondents have appeared and have filed their respective affidavits to oppose grant of any of the prayers of the petitioners. The respondents have mainly opposed the petition on the ground that a Civil Suit is filed by Shree Shantadurga Sausthan and six others, who have claimed to be the Executive Members of the Managing Committee of the Sausthan against the same respondents No.9, 10, 11 and 12. In the said Civil Suit, the following, inter alia, two main prayers are made :

" (a) The defendants, by themselves or

through their agents, servants, labourers or any person on their behalf be restrained from continuing with the construction activities of the said commercial complex in the property surveyed under No.187/8 without obtaining proper permission from all the authorities and removing the deficiencies as pointed out in the body of the plaint.

(b) The defendants be directed to demolish the entire construction so far undertaken by them in the said property surveyed under No.187/8".

4. We have carefully gone through the Petition and we find that the grounds which are taken in the Writ Petition are more or less the same which are in the pending suit before the Civil Court. The plaintiffs have filed the said suit as a representative suit, seeking permission under Order 1, Rule 8 of C.P.C. There is hardly any change in the pleadings in the suit and in the present writ petition as far as the main grounds or the merits of the dispute or the controversy is concerned. Though Shri Lotlikar has tried to submit that the reliefs sought in the present petition are different and that the parties are not the same, we are satisfied that the reliefs sought in the petition and

the suit are more or less the same. No doubt in the petition, the Statutory Authorities are also impleaded to create a challenge to their orders granting permission to the respondents 9 to 11 for construction of the building under Article 226.

5. Since the Civil Court is seized of the very same dispute or controversy pertaining to the same subject-matter, we have deliberately refrained from making any observations or expressing any opinion in respect of the merits of the controversy. Further, in view of the suit filed by the Sausthan and six others who have claimed to be the Executive Members of the Managing Committee of the Sausthan, which is in the nature of the representative suit and permission under Order 1, Rule 8 of C.P.C. is also sought and granted, in that case, even the present petitioners would be deemed to have been represented in the said suit before the Civil Suit. From the lengthy submissions made on behalf of both the sides and from the voluminous proceedings before us, we find it very difficult to decide all the disputed questions of facts and the questions of law which are based on the disputed facts, merely on the basis of the affidavits filed by the parties. The entire controversy definitely requires a full-fledged trial and it cannot be decided in a Writ Petition under Article 226 of the Constitution of India

and that too in a form of Public Interest litigation. The petitioners have claimed to be the devotees of Goddess Shantadurga and they have no other status in the matter. The appropriate forum for resolution of such controversy which involves a number of questions of facts and the mixed questions of law and facts, is the Civil Court and the plaintiffs therein have rightly and properly approached the Civil Court to get the controversy settled in accordance with law. We cannot decide the said controversy in our extra-ordinary and narrow jurisdiction under Article 226 of the Constitution of India. The petitioners have wrongly approached this Court by filing the present so called public interest litigation-petition. They ought to have got themselves impleaded before the Civil Court in the pending civil suit instead of rushing to this Court in the garb of a PIL which is wholly misconceived.

6. We have already observed that the grounds in the Civil Suit and the petition are more or less the same. It would be open to the present petitioners to approach the Civil Court in the said suit to seek permission to get themselves impleaded or to intervene in the said matter and put forward their contentions in accordance with law. In the facts and circumstances, which we have narrated above, it is not possible for us to decide the controversy and grant any of the prayers

made by the petitioners. We, therefore, dismiss the petition with liberty to the petitioners to approach the Civil Court either independently or in the pending Civil Suit filed by the plaintiffs before the Civil Court. Rule is discharged. No order as to costs. It is needless to mention that the interim orders, if any, stand vacated.

R.J. KOCHAR. J.

P.V. HARDAS, J.

ssm.